

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

NOTTINGHAM MANOR OWNERS
ASSOCIATION,

vs.

AMGUARD INSURANCE COMPANY

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Civil Action No. 3:21-cv-00079

(JURY)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant AmGuard Insurance Company timely files this Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1332(a), and 28 U.S.C. §1446(b), removing this action from the 448th Judicial District Court of El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division, and in support thereof show as follows:

A. Introduction

1. Plaintiff commenced this lawsuit against Defendant in the 448th Judicial District Court of El Paso County, Texas by filing its Original Petition on or about February 24, 2021. A true and correct copy of the Original Petition is attached hereto as Exhibit “A.” Plaintiff served the Original Petition on Defendant AmGuard Insurance Company on March 1, 2021. A true and correct copy of Defendant’s Answer to Plaintiffs’ Original Petition, Defendant’s Special Exceptions, and Defendant’s Jury Demand filed on March 26, 2021 is attached hereto as Exhibit “B.”

2. Defendant is filing this Notice of Removal within 30 days of their first receipt of Plaintiff’s Original Petition as required by 28 U.S.C. § 1446(b).

3. Plaintiff seeks to recover damages in this lawsuit based on allegations of breach of contract, bad faith claims, and violations of the Texas Insurance Code resulting from the alleged conduct of Defendant. Plaintiff's claims arise under a policy of insurance on Plaintiff's commercial property issued by Defendant AmGuard Insurance Company. Plaintiff's property is located in El Paso, Texas, which is alleged to have been damaged during a wind and hail storm on August 27, 2019.

B. Jurisdiction & Removal

4. In a removal situation, the burden is on the removing party to establish the existence of jurisdiction and the propriety of removal. *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00. Accordingly, statutory authority for the removal of this matter is conferred by 28 U.S.C. §§ 1441 and 1446.

5. Complete diversity under 28 U.S.C. § 1332 exists in this case. Plaintiff is a corporation licensed to do business in the State of Texas. AmGuard Insurance Company is a Pennsylvania corporation and maintains its principal place of business in Pennsylvania. As such, for diversity purposes, AmGuard is a citizen of Pennsylvania. §1332(c)(1).

6. In addition, the amount in controversy meets the minimum jurisdictional requirements under 28 U.S.C. § 1332. Here, Plaintiff's Original Petition states that they are seeking monetary relief of over \$1,000,000.00 (See Paragraph 4). Therefore, the amount in controversy exceeds \$75,000.00.

7. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district and division.

8. Contemporaneous with the filing of this Notice of Removal, Defendant is filing a Notice of Filing Notice of Removal with the Clerk of Court for the 448th Judicial District Court of El Paso County, Texas pursuant to 28 U.S.C. § 1446(d).

9. Attached hereto are all documents required by 28 U.S.C. § 1446(a).

10. Defendant demanded a jury in the state court action. Defendant also requests a trial by jury pursuant to Rule 81(c)(3)(A), Federal Rules of Civil Procedure.

11. All fees required by law in connection with this Notice have been tendered and paid by Defendant.

WHEREFORE, Defendant AmGuard Insurance Company hereby removes the above-captioned matter now pending in the 448th Judicial District Court of El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division.

Respectfully submitted,

SHEEHY, WARE & PAPPAS, P.C.

By: /s/ J. Mark Kressenberg

J. Mark Kressenberg, attorney in charge

Fed. Adm. No. 7793

Texas State Bar No. 11725900

Dawn A. Moore

Fed. Adm. No. 558181

Texas State Bar No. 24040447

909 Fannin Street

Two Houston Center, Suite 2500

Houston, Texas 77010-1003

713-951-1000 Telephone

713-951-1199 Telecopier

**ATTORNEYS FOR THE DEFENDANT
AMGUARD INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing instrument has been forwarded via e-filing in accordance with the Federal Rules of Civil Procedure on this the 30th day of March, 2021 to the following counsel of record:

Maria Gerguis
mgerguis@dalyblack.com
Richard D. Daly
rdaly@dalyblack.com
ecfs@dalyblack.com
DALY & BLACK, P.C.
2211 Norfolk St., Suite 800
Houston, Texas 77098
(713) 655-1405
(713) 655-1587 (facsimile)

/s/ J. Mark Kressenberg

J. Mark Kressenberg

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